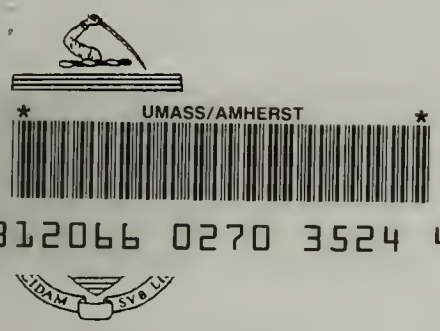
MASS. EA 10.2: W 33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WETLANDS PROGRAM POLICY: ACTIVITIES IN THE BUFFER ZONE UNDER THE WETLANDS PROTECTION ACT REGULATIONS (310 CMR 10.00)

Effective Date: March 6, 1999 Policy #: BRP/DWM/WWP 99-1

Program Applicability: DEP Wetlands Program and municipal conservation commissions

Supersedes Policy #: None

Approved by:
Arleen O'Donnell, Assistant Commissioner
Bureau of Resource Protection

PURPOSE: Based on its experience with activities in the "buffer zone" of wetland resource areas, the Department is issuing this Policy to create a rebuttable "presumption" that projects occurring exclusively within the buffer zone that meet criteria specified in the policy should be allowed to proceed under a Negative Determination of Applicability.

APPLICABILITY: Applies to DEP Wetlands Program Staff and supervisory personnel and to municipal conservation commissions acting as an "issuing authority" pursuant to the Wetlands Protection Act (M.G.L. c. 131 s. 40) and its Regulations (310 CMR 10.00).

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Buffer Zone: Activities in the Buffer Zone (Policy 99-1)
Issued: March 6, 1999

Introduction
In 1983, the Department determined that since activities in the 100-foot buffer zone are sufficiently likely to alter a resource area, preconstruction review may be necessary. Therefore, a Request for Determination of Applicability or Notice of Intent must be filed for all activities within the buffer zone. Since the 1983 regulatory revisions, the Department has gained considerable experience with the effect of activities in the buffer zone of resource areas. The Department therefore is establishing criteria for activities that are proposed to occur exclusively within the buffer zone and a presumption that projects meeting the criteria may proceed under a Negative Determination of Applicability.

In its revisions to implement the Rivers Protection Act, the Department identified carefully circumscribed categories of minor activities within the riverfront area or within the buffer zone to another resource area and exempted them from review. For projects that are not exempt, the Department has determined that the location and scope of the activity within the buffer zone is the most important factor in protecting against adverse impacts. Establishing performance standards for work that is proposed exclusively within the buffer zone will increase wetlands protection by steering development away from the edge of resource areas.

By encouraging project proponents to meet these criteria, the review of relatively small projects limited to work within the buffer zone should proceed more smoothly for applicants, conservation commissions, and the Department. The Department hopes that streamlining the review of smaller projects will allow more time for the review of projects with the potential for greater impacts. The application of uniform criteria for similar projects will ease the administrative burden on commissions and the Department, allowing more efficient use of resources while promoting wetlands protection. While commissions may regulate activities in the buffer zone differently under local bylaws, the Department encourages the use of these criteria and this process for all qualifying projects under the state regulations.

Criteria for Activities in the Buffer Zone
The issuing authority shall presume that activities that are proposed to occur exclusively within the buffer zone are eligible for a Negative Determination of Applicability if:

1. Alteration within the buffer zone is less than 5,000 square feet or 10% of the buffer zone on the lot, whichever is less;

2. At a minimum, a 50-foot wide area of undisturbed vegetation in the buffer zone along the resource area is provided;

3. Stormwater is managed according to standards established by the Department;

4. The buffer zone where the project is proposed does not border an Outstanding Resource Water (i.e., certified vernal pool, public water supply, or some ACECs);

5. The buffer zone does not contain estimated wildlife habitat which is indicated on the most recent Estimated Habitat Map of State-listed Rare Wetlands Wildlife; and

6. Erosion and sedimentation controls are provided at the limit of work to protect resource areas.

A conservation commission or the Department may determine that this presumption should not apply based on unusual characteristics of the site (e.g., steep slopes) or of the project (e.g., potential for impacts over time that may require oversight through continuing conditions in a Certificate of Compliance). If a commission or the Department determines the presumption should not apply, or if an applicant does not submit sufficient information to allow the commission to determine whether the criteria are met, it may issue a Positive Determination and require a Notice of Intent. Applicants proposing activities which do not meet these criteria may be required to submit a Notice of Intent to the conservation commission for preconstruction review and conditions to protect the interests of the Act.

Conservation commissions or Department staff should always conduct a site visit to verify that the project is limited to work within the buffer zone and the criteria are met. The issuing authority should be confident that the boundaries of wetland resource areas have been properly delineated. Work must conform to the plans submitted with the Request for Determination or any modifications imposed by the issuing authority in the Determination of Applicability. Failure to conform to the plans and specifications shall constitute grounds for requiring a Notice of Intent or enforcement action by the commission or the Department.